IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

WP(C).No. 574 of 2007(R)

PETITIONER:

KRISHNAKUMAR C
FIELD ASSISTANT, B-BLOCK (A.IIII)
PERAMBRA ESTATE
PLANTATION CORPN. OF KERALA LTD.
MUTHUKAD P.O., PERAMBRA

BY ADV. SRI.P.SANKARANKUTTY NAIR
SRI.V.AJAYAKUMAR
SRI. SONA M.S.

RESPONDENTS:

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1. THE PLANTATION CORPN. OF KERALA LTD.
KOTTAYAM - 686 004
REP. BY THE MANAGING DIRECTOR

2. THE GENERAL MANAGER (C & P)
THE PLANTATION CORPN. OF KERALA LTD.
KOTTAYAM - 686 004.

BY ADV. SRI.JOSEPH KODIANTHARA
SRI.MITHUN MARKOS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

WP(C)No. 574 OF 2007

Dated this the 11th January, 2007.

JUDGMENT

The petitioner is working as Field Assistant under the first respondent. The appointment of the petitioner was through Employment Exchange with the specific conditions that the appointment was a temporary one and liable to be terminated at the expiry of the period of 180 days. Knowing fully well that the appointment is temporary and the same will be governed by the terms and conditions stated in the appointment order(Ext.P1) the petitioner reported for duty. However, on completion of the period of 180 days, the petitioner has made a claim that he should be permitted to continue in service notwithstanding the fact that the appointment is temporary and the further fact that the same is liable to be terminated on completion of 180 days. The main ground urged by the petitioner is that an employee appointed on temporary basis has got the right to work until a regularly selected candidate joins duty and is not liable to be replaced by another temporary employee. Counsel for the petitioner has cited the decision of a Division Bench of this Court in **Manoj K.R v. Kerala State Beverages Corporation** {ILR 2006(4) Kerala 285}.

2. I heard the counsel appearing for the respondents

who made it clear that the respondents do not intend to allow temporary hands to work for indefinite periods.

3. The law relating to the right of temporary employees to work beyond the term of the appointment is settled by the decisions of this Court as well as that of the Supreme Court. In a recent decision of the Supreme Court in **State of Karnataka v. Uma Devi** {2006(4) SCC 1} the parameters to be followed and to be observed by the appointing authorities particularly those bound by the Constitutional mandate of Art.16 of the Constitution have been clearly laid down. Imbibing the message of those decisions, it is reasonable to hold that temporary appointments shall not be allowed to mature itself into regular appointment because any such action will adversely affect the interest of those who have got the merit and the right to contest for regular appointment in terms of the recruitment rules. It would appear that the respondents are following the legislative policy underlying Rule 9(a)(i) of K.S & S.S.R, which is evident from the nature of the appointment order restricting the term of appointment of the petitioner to 180 days. The legislative policy as seen from Rule 9(a)(i) of K.S & S.S.R is that temporary appointments shall not be allowed to continue beyond a maximum period of 179 days except in the case of certain

categories of appointments which may extend for a maximum period of one year. The above rule further says that the vacancies shall be immediately reported to the Employment Exchange so that another set of candidates shall be appointed. The rule further says that persons who had the opportunity to work temporarily for sometime need be preferred for a subsequent appointment only after opportunity is given to those who did not get that opportunity at least once. Therefore, the request made by the petitioner that he should be allowed to continue in service until regular hands report for duty will in effect amount to total denial of opportunity for those who have registered their names in the same manner as that of the petitioner and waiting for their turn. The petitioner cannot cling on to the post indefinitely knowing fully well that the appointment is temporary in nature. In Umadevi's case (supra) the apex Court have taken into consideration similar situations and it has in fact been observed that every temporary employee enters service knowing fully well that the service is liable to be terminated in terms of the contract of appointment or in terms of the order of appointment or the statutory rule. The facts and circumstances under which the Division Bench held that the appellants before the Division Bench shall be allowed to

continue until regular hands join duty are entirely different from the facts of this case. Hence, I am not able to accept the contention that the Division Bench judgment shall be followed in this case, though the dictum laid down by the Constitution Bench is to the contrary. Writ petition is devoid of merits.

4. Counsel for the petitioner submits that the first respondent has deducted certain amount towards pension and PF and therefore the respondents are estopped from contending that the petitioner's service is liable to be terminated on the expiry of 180 days. If the above contention is taken to its logical end it would mean that the petitioner has got a right to continue in service just like a regular employee. The contentions urged in the writ petition in fact do not go to that extent. As already observed, the request of the petitioner is that he may be allowed to continue until regular hands selected by the PSC join duty. The petitioner do recognise the fact that regular appointments can be made only through PSC. Therefore, the mere fact that the respondents have deducted amounts towards PF and pensionary benefits from the emoluments due to the petitioner, will not confer any right on him to continue in employment beyond the terms of the appointment.

5. Learned counsel for the respondents submits that whatever amount has been deducted from the emoluments of the petitioner towards PF and pension contribution will be returned to the petitioner. This submission is recorded.

6. The claim of the petitioner for interest for the above amount will be considered by the respondents and appropriate decision taken.

K.K.DENESAN
Judge

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